

IN RE DRENNAN and HONKOMPF

Complaint 2003 - No's. 5 and 7

August 21, 2003

REASONABLE CAUSE DETERMINATION - ORDER OF DISMISSAL

1. Nature of the Complaints

The complainant alleges that the respondents used the legislative e-mail system to send messages to each other considered "vulgar and obscene" by the complainant and that such conduct violated Legislative Ethics Board Rule 3 - Private Use of State Resources (Rule 3).

II. Procedural History

The complaints were received by the Board on April 12, 2003. The Board has both personal and subject-matter jurisdiction. An investigation was conducted and the Board considered the complaints on May 15, June 26, and July 17, 2003.

III. Issue

Did the respondent's use of the legislative e-mail system to send and receive e-mails between them, which contained language described by the complainant as "vulgar and obscene," constitute reasonable cause to believe there has been a violation of Rule 3 of the Legislative Ethics Act?

IV. Answer

No. We find that the e-mails were inappropriate and ill-advised and that the respondents exhibited extremely poor judgment, but conclude that these personal communications between respondents do not violate Rule 3

Further, we conclude as follows:

1. Rule 3 does not condemn "bad words," whatever those may be in someone's opinion. The Board is reluctant to assume the role as the judge of the content of speech in the workplace, whether it be in the form of verbal communication between staff members or intranet e-mail.
2. These e-mails contain words and phrases which most would conclude are offensive and inappropriate for the workplace. The primary responsibility for discipline should reside in the employer. The Senate has adopted a "respectful workplace policy" which seems particularly well suited for addressing this type of behavior.

3. The Board would, albeit reluctantly, consider amendments to Rule 3 if there is future evidence that this type of e-mail use was continuing unabated in either house.

V. Facts

The e-mails speak for themselves. Approximately thirty, sent or received between the respondents from December, 2000 to September, 2002, have been provided to the Board and are incorporated herein by reference.

VI. Analysis

1. **Rule 3 - Private Use of Public Resources** - is silent on the issue of whether the Ethics Act would be violated by the content of speech in the workplace considered obscene by some observers.

The hypothetical examples given in Rule 3, as guidance to legislators and legislative employees, emphasize *the particular use* to which public resources are put and cannot fairly be said to demonstrate that *the actual words* used are subject to discipline under the Act (emphasis added).

For example: (**Legislative Ethics Manual, 2003 Edition, Rule 3 - pages 83 -88**)

Example 1: An employee makes a local telephone call home every afternoon while on break to make sure the employee's children have arrived home safely from school. This is not an ethical violation. There is no cost to the state and since the call takes place on the employee's break it will not interfere with the performance of the employee's duties.

Example 2: An employee operates an outside business. Every day the employee makes or receives five to ten business calls using a state telephone. All of the calls are local calls. This is an ethical violation. Although there is no cost to the state, making and receiving private calls throughout the day interferes with the performance of the employee's official duties because the employee is conducting private business during working hours.

2. In addition to citing the Ethics Law on personal use of public resources, the Senate has adopted broader restrictions on the personal use of computers (**Senate Policy and Personnel Reference Manual, 2003 Edition, page 36**).

Each user is individually responsible for the content of any communication sent via the Internet. Personal use is also subject to the restrictions imposed on all workplace communications by Senate employees, personal and professional. These long-standing restrictions include adherence to respectful workplace policies regarding sexual harassment, no personal gain from state resources, no electoral campaign uses, no viewing of pornography, and avoiding sustained usage that creates productivity problems.

It is apparent that the Senate has found certain personal uses of computers to be patently improper even if they are not directly addressed by the Ethics Act and in adopting this policy the Senate has, in our view, properly exercised the prerogatives and responsibilities of an employer in setting the tone and establishing the culture for the workplace. The Ethics Board should not be viewed as the chief personnel officer when disputes arise in the legislative workplace.

VII. Order

The complaints are dismissed for lack of reasonable cause to believe there has been a violation.

James A. Andersen, Chair